

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION

CASE NUMBER 2:06-CV-1754

FIREMAN'S FUND INSURANCE COMPANY, as
SUBROGEE for LIMEHOUSE & SONS, INC.,
Plaintiffs,

v.

AMERICAN EQUIPMENT CORPORATION, INC., ET AL.,
Defendants.

DEPOSITION OF
DAVID MCCANDLESS

At Raleigh, North Carolina

Tuesday, April 14, 2009

10:02 a.m.

Reported by: Lindsey D. Cline, CVR

EXHIBIT A

David McCandless

1 have you consulted with anybody concerning this
2 case?

3 A. Well, I mean, at the initial inspection, Bill
4 Johnson was there and some gentlemen from
5 Limehouse were there. Ray Pope was there. I
6 certainly talked to Ray at that point because we
7 were both essentially working on behalf of the
8 same -- same party. Now, I don't -- I mean, that
9 was five years ago, so I don't recall the specific
10 conversations, but I'm sure we had conversations
11 at that time.

12 Q. Do you remember, generally, the conversations that
13 you had?

14 A. No, sir, not at all.

15 Q. Do you remember what they had to do with?

16 A. Well, I would -- It would probably be he had
17 intimate knowledge of that machine and all the
18 functions and components on that machine, and so
19 I'm sure I would have asked him questions
20 regarding those -- those things, but like I said,
21 I don't remember the specific conversation with
22 him.

23 Q. Do you remember any of the questions that you
24 might have asked him?

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1 A. No, sir.

2 Q. And do you remember any of the answers that he
3 would have given you?

4 A. No.

5 Q. And in forming your opinions in this case, did you
6 rely at all on the conversation that you had with
7 Mr. Pope?

8 A. To the extent that when we were there, if I asked
9 him the function of a particular component in the
10 machine, if I used that information in formulating
11 my opinion, I mean, I have notes that have my
12 observations I made at the time.

13 Now, if I learned something and put it
14 in the notes that I learned from him, then sure,
15 that could be part of the basis of my opinions
16 going forward. I don't recall what specific
17 information he told me at the time, no.

18 Q. And I don't want to belabor the point, but do you
19 remember whether you asked him about the function
20 of any specific components of the crane? I only
21 ask because you mentioned --

22 A. No, I mean, I'm sure I did. If I have a person
23 that's there that is more familiar with the
24 machine than I am, then certainly I'll ask them a

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1 the cables going to the starter and those would be
2 the areas where it ignited. So you wouldn't
3 necessarily have flames shooting out of the
4 starter if a malfunction in the starter caused the
5 fire. So just because you don't see, you know, a
6 burned hole in the side of the starter, that
7 doesn't mean you can categorically exclude it.

8 Q. Well, was there any evidence to you that the
9 starter caused the fire?

10 A. Again, at the time when we looked at it, not
11 having the information that we do now, I didn't
12 look at it and go -- and think that we needed to
13 absolutely take the starter off.

14 Q. So there was nothing, when you looked at this
15 engine, that indicated to you that the starter was
16 involved in the fire?

17 A. Well, the starter was definitely in an area that
18 was burned, so, I mean, involved in it, yes, it's,
19 again, within several inches of what would be the
20 origin of the fire under a hose failure scenario.
21 So sure it's involved, it's burned.

22 Q. Was there any evidence to you when you looked at
23 the engine that the starter caused the fire?

24 A. I certainly didn't leave the examination with the

David McCandless

1 conclusion that the starter had caused the fire.

2 Q. But was there any evidence to you when you had the
3 engine in front of you to look at that the starter
4 caused the fire?

5 A. Again, the starter was damaged and, no, I didn't
6 propose that we disassemble the starter or take
7 the starter off.

8 Q. Well, sir, there's a lot of things that were
9 damaged, right?

10 A. Sure.

11 Q. Okay. Was there -- I'm going to ask you the same
12 question because I don't think you've given me an
13 answer, yes or no, and I believe it's a yes or no
14 question.

15 When you looked at the engine was there
16 any evidence to you that the starter caused the
17 fire?

18 A. There's -- when you say any evidence, there's some
19 evidence that it could have, just in the sense of
20 we have the insulation burned off of the leads
21 directly adjacent to the starter. So to the
22 extent that we have that type damage, yes. I
23 didn't -- it would have been more helpful,
24 certainly, to have the information and history

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1 regarding the starter at the time.

2 Q. Well, was the starter available to you for your
3 review?

4 A. Yes, it was.

5 Q. Did anybody tell you not to look at the starter?

6 A. No.

7 Q. Did anybody tell you not to inquire as to
8 maintenance information about the starter?

9 A. Well, no. We asked Earl about any maintenance
10 history, any recent work on the crane, and he told
11 us about some other things that had been changed,
12 an alternator a few months before the fire, but
13 you know, did not mention to me or Bill anything
14 about the starter having been changed.

15 Q. Did you make a conclusion as to the most likely
16 cause and origin of this fire at some point?

17 A. At some point, sure.

18 Q. Okay. And was that conclusion set forth in your
19 report?

20 A. Yes.

21 Q. Okay. Does it remain your opinion -- strike that.
22 Was it your opinion at the time that you issued
23 the report that the most likely cause and origin
24 of the fire was the failed hydraulic hose that you

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1 saw?

2 A. Yes.

3 Q. Okay. Does it remain your conclusion that the
4 most likely cause and origin of the fire was the
5 failed hydraulic hose that you saw?

6 A. Most likely, probably so, yes.

7 Q. Okay. Did you see any evidence of a starter
8 failure?

9 A. There is -- there's certainly evidence of heat on
10 the external case of the starter. I mean, we
11 certainly have the leads going to the starter that
12 the insulation is consumed on.

13 Q. So you saw fire damage?

14 A. Well, yes, there's heat damage there.

15 Q. Okay. And -- I'm sorry, I was cutting you off.

16 A. Well, what I'm saying is is that -- that damage is
17 -- the damage we see there is not -- does not
18 uniquely exclude the starter --

19 Q. Okay.

20 A. -- based on the investigation that was done.

21 Q. Because there's -- And I'm just trying to do this
22 so I can understand it. Is it your testimony that
23 because there is heat damage around the starter
24 that you couldn't exclude the starter as the

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1 leak on the upper that could get fluid down into
2 the area on the right side of the engine, then
3 certainly you would have to consider that a
4 possibility. Without knowing where the observed
5 leaks were, it's hard for me to say. When we're
6 looking at the unit and it's not pressurized and
7 it's already been through a fire, it's going to be
8 hard for me to say exactly where a leak may or may
9 not have been on the upper.

10 Q. Uh-huh. Do you have any reason to disbelieve that
11 the cause and origin of the fire was fuel
12 emanating from the lower portion of the crane,
13 based on everything --

14 A. Based on what we've seen, I think more likely --
15 if we're looking at a hydraulic leak scenario, I
16 think it's more likely that it would be the lower
17 unit.

18 Q. Okay.

19 A. Because, again, with the information I had, I
20 couldn't observe one on the upper unit because I
21 never saw it pressurized.

22 Q. Uh-huh.

23 A. The people that did said there were leaks up
24 there. If those leaks could get to the exhaust

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1 identified the manufacturer of the hose to
2 anybody?

3 A. I do not.

4 Q. Shouldn't Grove know?

5 MR. HORTON: Objection.

6 THE WITNESS: I don't have that information.

7 Q. (Mr. Caputo) would you expect Grove to know the
8 manufacturer of its component parts?

9 MR. HORTON: Objection.

10 THE WITNESS: I don't know that they can
11 identify the exact component part on an exact
12 machine. I don't know whether they can or cannot.
13 I just don't know.

14 Q. (Mr. Caputo) would you expect them to be able to?

15 MR. HORTON: Objection.

16 THE WITNESS: I don't know.

17 Q. (Mr. Caputo) Okay. Is it your intent to
18 supplement your written report?

19 A. At this point in time, not that I know of.

20 Q. Okay. All right. I don't have anything else.

21 MR. HORTON: Nothing here. Patrick?

22 MR. SMITH: Nothing.

23 (THEREUPON, THE WITNESS WAS DISMISSED AT 1:00 P.M.)
24

STATE OF NORTH CAROLINA

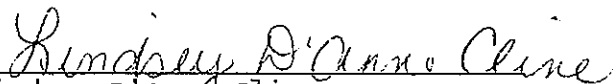
COUNTY OF WAKE

C E R T I F I C A T E

I, Lindsey D'Anne Cline, Court Reporter and Notary Public, the officer before whom the foregoing proceeding was conducted, do hereby certify that the witness(es) whose testimony appears in the foregoing proceeding were duly sworn by me; that the testimony of said witness(es) were taken by me to the best of my ability and thereafter transcribed under my supervision; and that the foregoing pages, inclusive, constitute a true and accurate transcription of the testimony of the witness(s).

I do further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in which this proceeding was conducted, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereof, nor financially or otherwise interested in the outcome of the action.

This the 16th day of April, 2009.


Lindsey D'Anne Cline
Notary Public No. 20002130221

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

FIREMAN'S FUND INSURANCE

COMPANY, as subrogee for

LIMEHOUSE & SONS INC.;

CIVIL

Plaintiffs,

ACTION NO:

VS.

AMERICAN EQUIPMENT

2:06-1754

COMPANY, INC.; THE

PMD

MANITOWOC INTERNATIONAL

CORP.; et al.,

Defendants.

DEPOSITION OF RAY C. POPE

The deposition of RAY C. POPE was taken by the Plaintiffs before Darlene Scott-Moore, CSR, as Commissioner, pursuant to the stipulations set forth herein.

February 18, 2009
Regional Reporting Service
755 Walnut Street
Gadsden, Alabama 35901

1 **Q.** And was it maintained as a wet bell
2 housing?

3 **A.** No.

4 **Q.** How do you know it wasn't
5 maintained as a wet bell housing?

6 **A.** Because Mr. Limehouse said they had
7 changed the starter a couple weeks
8 before. And I know them, I know
9 their maintenance, I know how they
10 think. They bought the cheapest
11 thing available.

12 **Q.** So if Limehouse, for purposes of
13 this question, used a dry bell
14 housing, why would that lead to a
15 fire? Why does a dry not work with
16 a wet?

17 **A.** Because oil will seep into a dry
18 starter and catch on fire. It
19 can't -- versus a wet starter has
20 seals to prevent that from
21 happening, from the oil from the
22 gear box. Because the transmission
23 cover is a gear box that drives a

1 **A.** You are quite welcome.

2 **Q.** I have a couple questions for you.
3 And they relate, as you might be
4 able to anticipate, to this starter
5 that you discussed with Mr. Giles
6 in your deposition.

7 Now, if I'm correct in looking
8 at your report that you and Mr.
9 Giles discussed earlier, you stated
10 that you saw some -- it looked like
11 the starter was burned up and the
12 solenoid was burned; is that right?

13 **A.** Yes.

14 **Q.** Now, the starter solenoid, is that
15 just part of the starter?

16 **A.** Yes, it's mounted on top of the
17 starter.

18 **Q.** The only experience I have with
19 solenoids is when they break in my
20 car, it's very expensive. All
21 right.

22 And you noticed this while you
23 were looking at this crane?

1 **A.** Yes.

2 **Q.** I noted in here that you stated
3 that engine starter -- and the
4 starting motor and an engine
5 starter, is that the same thing?

6 **A.** Yes.

7 **Q.** It's just different ways of saying
8 it?

9 **A.** Yes. Nomenclature.

10 **Q.** You noted in your report that this
11 had been changed within the last
12 two weeks. Can you tell me how you
13 knew that?

14 **A.** Mr. Limehouse told me that it had.

15 **Q.** Now, if you are familiar with the
16 Limehouses like you said that you
17 are, you know that my next question
18 is going to be, which one? Do you
19 recall which Limehouse?

20 **A.** Jimmy Limehouse.

21 **Q.** Okay. Jimmy Limehouse?

22 **A.** Jimmy Limehouse.

23 **Q.** He told you that that starter had